

of time which includes more than one taxable year, the amount properly allocable to any taxable year in such period shall be determined by prorating such amounts to such taxable years under regulations prescribed by the Secretary.

**(c) Disallowance of deduction**

No deduction shall be allowed under subsection (a) with respect to any contribution described in subsection (a) which does not relate to any specified period of time.

(Added Pub. L. 96-364, title II, §209(c)(1), Sept. 26, 1980, 94 Stat. 1290, §194; renumbered §194A, Pub. L. 97-448, title III, §305(b)(1), Jan. 12, 1983, 96 Stat. 2399.)

REFERENCES IN TEXT

Section 4223(h) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (a), is classified to section 1403(h) of Title 29, Labor.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 311(c)(2) of Pub. L. 97-448 provided that: “The amendments made by subsection (b) of section 305 [re-designating section 194 of this title, relating to contributions to employer liability trusts, as this section] shall take effect on October 14, 1980.”

EFFECTIVE DATE

Section applicable to taxable years ending after Sept. 26, 1980, see section 210(c) of Pub. L. 96-364, set out as a note under section 418 of this title.

**§ 195. Start-up expenditures**

**(a) Capitalization of expenditures**

Except as otherwise provided in this section, no deduction shall be allowed for start-up expenditures.

**(b) Election to deduct**

**(1) Allowance of deduction**

If a taxpayer elects the application of this subsection with respect to any start-up expenditures—

(A) the taxpayer shall be allowed a deduction for the taxable year in which the active trade or business begins in an amount equal to the lesser of—

(i) the amount of start-up expenditures with respect to the active trade or business, or

(ii) \$5,000, reduced (but not below zero) by the amount by which such start-up expenditures exceed \$50,000, and

(B) the remainder of such start-up expenditures shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the active trade or business begins.

**(2) Dispositions before close of amortization period**

In any case in which a trade or business is completely disposed of by the taxpayer before the end of the period to which paragraph (1) applies, any deferred expenses attributable to such trade or business which were not allowed as a deduction by reason of this section may be deducted to the extent allowable under section 165.

**(3) Special rule for taxable years beginning in 2010**

In the case of a taxable year beginning in 2010, paragraph (1)(A)(ii) shall be applied—

(A) by substituting “\$10,000” for “\$5,000”, and

(B) by substituting “\$60,000” for “\$50,000”.

**(c) Definitions**

For purposes of this section—

**(1) Start-up expenditures**

The term “start-up expenditure” means any amount—

(A) paid or incurred in connection with—

(i) investigating the creation or acquisition of an active trade or business, or

(ii) creating an active trade or business, or

(iii) any activity engaged in for profit and for the production of income before the day on which the active trade or business begins, in anticipation of such activity becoming an active trade or business, and

(B) which, if paid or incurred in connection with the operation of an existing active trade or business (in the same field as the trade or business referred to in subparagraph (A)), would be allowable as a deduction for the taxable year in which paid or incurred.

The term “start-up expenditure” does not include any amount with respect to which a deduction is allowable under section 163(a), 164, or 174.

**(2) Beginning of trade or business**

**(A) In general**

Except as provided in subparagraph (B), the determination of when an active trade or business begins shall be made in accordance with such regulations as the Secretary may prescribe.

**(B) Acquired trade or business**

An acquired active trade or business shall be treated as beginning when the taxpayer acquires it.

**(d) Election**

**(1) Time for making election**

An election under subsection (b) shall be made not later than the time prescribed by law for filing the return for the taxable year in which the trade or business begins (including extensions thereof).

**(2) Scope of election**

The period selected under subsection (b) shall be adhered to in computing taxable income for the taxable year for which the election is made and all subsequent taxable years.

(Added Pub. L. 96-605, title I, §102(a), Dec. 28, 1980, 94 Stat. 3522; amended Pub. L. 98-369, div. A, title I, §94(a), July 18, 1984, 98 Stat. 614; Pub. L. 108-357, title VIII, §902(a), Oct. 22, 2004, 118 Stat. 1651; Pub. L. 111-240, title II, §2031(a), Sept. 27, 2010, 124 Stat. 2559.)

AMENDMENTS

2010—Subsec. (b)(3). Pub. L. 111-240 added par. (3).

2004—Subsec. (b). Pub. L. 108-357, §902(a)(2), substituted “deduct” for “amortize” in heading.

Subsec. (b)(1). Pub. L. 108-357, §902(a)(1), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: “Start-up expenditures

may, at the election of the taxpayer, be treated as deferred expenses. Such deferred expenses shall be allowed as a deduction prorated equally over such period of not less than 60 months as may be selected by the taxpayer (beginning with the month in which the active trade or business begins)."

1984—Subsec. (a). Pub. L. 98-369 amended subsec. (a) generally, substituting provisions dealing with capitalization of expenditures for provisions dealing with election to amortize.

Subsec. (b). Pub. L. 98-369 amended subsec. (b) generally, substituting provisions dealing with election to amortize for provisions dealing with start-up expenditures.

Subsec. (c). Pub. L. 98-369 amended subsec. (c) generally, substituting provisions setting forth definitions for provisions dealing with election.

Subsec. (d). Pub. L. 98-369 amended subsec. (d) generally, substituting provisions dealing with election for provisions dealing with business beginning.

#### EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-240, title II, §2031(b), Sept. 27, 2010, 124 Stat. 2559, provided that: "The amendment made by this section [amending this section] shall apply to amounts paid or incurred in taxable years beginning after December 31, 2009."

#### EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title VIII, §902(d), Oct. 22, 2004, 118 Stat. 1652, provided that: "The amendments made by this section [amending this section and sections 248 and 709 of this title] shall apply to amounts paid or incurred after the date of the enactment of this Act [Oct. 22, 2004]."

#### EFFECTIVE DATE OF 1984 AMENDMENT

Section 94(c) of Pub. L. 98-369 provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after June 30, 1984."

#### EFFECTIVE DATE

Section 102(c) of Pub. L. 96-605 provided that: "The amendments made by this section [enacting this section] shall apply to amounts paid or incurred after July 29, 1980, in taxable years ending after such date."

### § 196. Deduction for certain unused business credits

#### (a) Allowance of deduction

If any portion of the qualified business credits determined for any taxable year has not, after the application of section 38(c), been allowed to the taxpayer as a credit under section 38 for any taxable year, an amount equal to the credit not so allowed shall be allowed to the taxpayer as a deduction for the first taxable year following the last taxable year for which such credit could, under section 39, have been allowed as a credit.

#### (b) Taxpayer's dying or ceasing to exist

If a taxpayer dies or ceases to exist before the first taxable year following the last taxable year for which the qualified business credits could, under section 39, have been allowed as a credit, the amount described in subsection (a) (or the proper portion thereof) shall, under regulations prescribed by the Secretary, be allowed to the taxpayer as a deduction for the taxable year in which such death or cessation occurs.

#### (c) Qualified business credits

For purposes of this section, the term "qualified business credits" means—

(1) the investment credit determined under section 46 (but only to the extent attributable to property the basis of which is reduced by section 50(c)),

(2) the work opportunity credit determined under section 51(a),

(3) the alcohol fuels credit determined under section 40(a),

(4) the research credit determined under section 41(a) (other than such credit determined under section 280C(c)(3)) for taxable years beginning after December 31, 1988,

(5) the enhanced oil recovery credit determined under section 43(a),

(6) the empowerment zone employment credit determined under section 1396(a),

(7) the Indian employment credit determined under section 45A(a),

(8) the employer Social Security credit determined under section 45B(a),

(9) the new markets tax credit determined under section 45D(a),

(10) the small employer pension plan startup cost credit determined under section 45E(a),

(11) the biodiesel fuels credit determined under section 40A(a),

(12) the low sulfur diesel fuel production credit determined under section 45H(a),

(13) the new energy efficient home credit determined under section 45L(a), and

(14) the small employer health insurance credit determined under section 45R(a).

#### (d) Special rule for investment tax credit and research credit

Subsection (a) shall be applied by substituting "an amount equal to 50 percent of" for "an amount equal to" in the case of—

(1) the investment credit determined under section 46 (other than the rehabilitation credit), and

(2) the research credit determined under section 41(a) for a taxable year beginning before January 1, 1990.

(Added Pub. L. 97-248, title II, §205(a)(2), Sept. 3, 1982, 96 Stat. 428; amended Pub. L. 98-369, div. A, title IV, §474(r)(8)(A), July 18, 1984, 98 Stat. 840; Pub. L. 100-647, title IV, §4008(b)(2), Nov. 10, 1988, 102 Stat. 3653; Pub. L. 101-239, title VII, §§7110(c)(2), 7814(e)(1), (2)(D), Dec. 19, 1989, 103 Stat. 2325, 2413, 2414; Pub. L. 101-508, title XI, §§11511(b)(3), 11813(b)(12), Nov. 5, 1990, 104 Stat. 1388-485, 1388-554; Pub. L. 103-66, title XIII, §§13302(b)(2), 13322(c)(2), Aug. 10, 1993, 107 Stat. 555, 563; Pub. L. 104-188, title I, §1201(e)(1), Aug. 20, 1996, 110 Stat. 1772; Pub. L. 105-206, title VI, §6020(a), July 22, 1998, 112 Stat. 823; Pub. L. 106-554, §1(a)(7) [title I, §121(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A-610; Pub. L. 107-16, title VI, §619(c)(2), June 7, 2001, 115 Stat. 110; Pub. L. 108-357, title III, §§302(c)(2), 339(e), Oct. 22, 2004, 118 Stat. 1465, 1484; Pub. L. 109-58, title XIII, §1332(d), Aug. 8, 2005, 119 Stat. 1026; Pub. L. 111-148, title I, §1421(d)(2), Mar. 23, 2010, 124 Stat. 242.)

#### CODIFICATION

Another section 339(e) of Pub. L. 108-357 amended the table of sections for subpart D of part IV of subchapter A of this chapter.

#### AMENDMENTS

2010—Subsec. (c)(14). Pub. L. 111-148 added par. (14).